

**GOWERS REVIEW OF INTELLECTUAL PROPERTY
RESPONSE TO CALL FOR EVIDENCE FROM
GLASGOW CALEDONIAN UNIVERSITY**

General Questions

1. How IP is awarded?

- (a) System complexity relates primarily to the process for international filings. The uncertainty of outcome and timescale makes it very difficult to plan developments or seek investment. The situation would be particularly improved by increased responsiveness at European level.
- (b) In the University sector, commercialisation offices undertake a crucial internal role in explaining the processes to staff with little experience of IP rights. Such offices are fully aware of the need to file internationally to protect and exploit IP, and guide staff through the process.
- (c) The cost of obtaining UK rights is driven primarily by patent agent fees, and competition in this market at the regional level is limited. However, in the wider global knowledge economy, the UK patent system is not of itself the constraining factor.
- (d) The costs of a UK filing registration are reasonably competitive internationally. However, the overall international filing costs are an enormous barrier to IP protection. In particular overall costs of filing for the European single market are ludicrously high in comparison to the USA. This cost barrier is an enormous disincentive to innovation protection, which is damaging to competitiveness in the home market. Anything that can be done to reduce the level of EU patent costs would improve the scope for developing innovative capacity.
- (e) Any reduction in ongoing costs will always be beneficial to our ability to maintain our IP portfolio over the years necessary to support development of routes to market
- (f) The HEI sector is really an IP generator and licensor across a range of industries and has to use the capacity in the economy to reach markets. It is harder to attract external investment without protected IP.
- (g) The main barrier to obtaining rights in the HEI sector is the cost of supporting international filings in order to achieve maximum commercial advantage
- (h) Small businesses and inventors regularly contact Universities to seek help with development of IP. Many of these interactions reveal a frustration with the legal complexity of IP issues and shock at the costs and timescales required to obtain granted patents.
- (i) The UK patent office provides a satisfactory service. The international systems remain slow and expensive, particularly in Europe. The PCT system is expensive and slow. The international filing route e.g. in individual national territories (e.g. USA) is more economical, but Europe is still hindered by the requirement of registration and translation fees in multiple territories.

2. How IP is used?

- (a) Our organisation uses patents, trademarks, copyright and design rights. It is necessary to use the appropriate tools for the purpose in an organisation with a variety of types of intangible asset.
- (b) Trade-marking is often used as part of a parallel strategy involving IP branding. Since copyright does not need to be registered, it can be relied on as a secondary mechanism.

- (c) The differences in USA and European approaches to patenting software are a specific concern with barriers to innovative step greater in Europe. Because of the difficulty in this area, there is significant reliance on copyright to protect products.
- (d) The patenting process needs to be more responsive in terms of timescale. The gap between inventive step and granted of a patent is too long. Uncertainty in the outcome of an application can result in a delay in investment and consequently a further delay in time to market. Inventors must be prepared to pay tens of thousands of pounds in patent fees up-front, and this is a disincentive, particularly to smaller players, e.g. start up or spin out companies.
- (e) The term of IPR rights is an important consideration in IP-led investments. Anything that reduces the time to grant patents and increases the active life of a patent will increase the value of innovations to investors.
- (f) The UK IP system exists primarily for regulatory purposes. However, the patent office website guidance information is useful to innovators, and the search tools available are valuable in developing ideas and IP.
- (g) The University is a beneficiary of public funding uses this to support the development of innovations to benefit the wider economy.
- (h) Data on IP disclosure is used as a general indicator of innovation, but IP registration does not guarantee commercial advantage.
- (i) No.
- (j) Yes. This is common practice in large corporations.

3. How IP is licensed and exchanged?

- (a) It is relatively straightforward with those skilled in the field, but less so with smaller companies unused to industry IP licensing practice.
- (b) Mechanisms include: industry databases, websites, clients, investors, IP searches, research networks.
- (c) We have not found difficulty in arranging exemptions to carry out research for educational purposes only.
- (d) There are no specific barriers identified.
- (e) The main barrier to licensing is balancing the commercial dynamic between risk and reward, particularly in respect of up-front payments and ongoing royalties for exclusive rights. The licensor will wish to recover IP registration and development costs as early as possible, while the licensee will wish to focus on the forward risks and expenditure in achieving market penetration.
- (f) The main barrier lies in licensing to downstream partners with suitable scale to fully exploit IP position.
- (g) We have engaged in pooling of IP rights.
- (h) -
- (i) The main barriers to IP trade internationally are the different legal systems in place and the practical lack of recognition of IP rights in some countries.
- (j) We look for exclusive licensing deals where possible with restrictions on field of use if appropriate.
- (k) This is not a key issue.

(l) No.

4. How IP is challenged and enforced?

- (a) The biggest problem is policing IP infringement. It is extremely difficult to identify potential or covert infringement, and having done so, proving it legally and subsequently having rights practically enforced. It is also possible to infringe the rights of others inadvertently, because of the complexity of interpretation of patent coverage.
- (b) The main barrier to enforcement of IP rights is cost. Legal costs are significant, particularly at the international level.
- (c) It is normal practice to attempt to settle out of court. In international disputes, it is not always possible to rely on national dispute resolution services.
- (d) -
- (e) -
- (f) Cost.
- (g) -
- (h) -

Specific Issues

Copyright

A new blanket licence

To ensure a proper balance between the encouragement of investment in innovation with the need to prevent impediments to future innovation a reformed blanket licence for educational use is needed to ensure a legal framework adequate for the digital age.

The basic argument is that blanket licensing can provide a good solution to reconciling educational use with the reasonable remuneration of rights owners. However, it requires a good statutory framework, essentially a right to a licence. The ERA licence has been effective and largely untroublesome until now because CDPA (Copyright, Designs and Patents Act, 1988) 34-5 provide essentially a right to use in the absence of a licence, which forces rights owners to negotiate one. In contrast CDPA 36 was far too limited (it only allows copying 1% per term of published works), which has meant that CLA was constantly struggling to get an adequate mandate.

The problem now however that digital production/distribution is changing too fast for legislated solutions. For example, the new definition of 'broadcast' in 2003 is already unclear with the emergence of podcasts. The Copyright Tribunal is an inadequate method of dealing with such issues, as it is an expensive procedure, and only applies retrospectively.

We propose the establishment of an Educational Licensing Agency, with the power to issue licences for educational uses on appropriate terms. It would largely take over the powers at present vested in the Secretary of State, e.g. CDPA 137, 140, 141, and some of the powers of the Copyright Tribunal (to award/extend licences, and modify terms), but its decisions and the licences awarded would be subject to review by the Tribunal. Its Board should include people from both the user and rights owners' communities, though not as representatives. Since it would essentially take over the roles of bodies such as CLA and ERA, its costs could come (as theirs have done) from top-slicing the revenue, so they would not fall on the taxpayer.

Amendments to existing copyright legislation

1 The balance between consumers of copyrighted information and rights holders has been adversely affected by the extension of copyright term (Copyright Term Directive 1993) and in particular the coming into force of the Copyright and Related Rights Regulations 2003, implementing the Information Society Directive 2001. By virtue of those measures

the rights of consumers, including academic and scientific end-users, were seriously diminished and the position of rights-holders correspondingly strengthened. The fundamental flaw in the Directive, carried through into UK law, is that it seeks to control illicit copying by inappropriate curtailment of legitimate copying. The UK's long-standing exceptions to copyright have been severely diminished by the new supremacy of contract law over copyright law in regulating access to information, and by the absolute legal protection of any technical system installed to control access to information. (NB this questions the assumption on page 1 of the Call for Evidence that 'the present UK system strikes broadly the right balance between consumers and rightsholders'). Copyright law should therefore be amended to ensure that no contractual term may purport to prohibit or restrict any act permitted by statute. This would restore the exceptions to copyright to their original effectiveness.

2 Additionally, the following is recommended

- (a) a new statutory exception for the exploitation of orphan works – they constitute a severe problem for academic research and could offer profitable opportunities for the publishing industry. Tracing difficult to find rights holders is a major and time consuming problem in higher education and the need for it should be abandoned given that no financial advantage will result to the HE if the usage is for educational purposes only.
- (b) the extension of fair dealing in the UK to all classes of copyright material – in order to reduce the complexity and illogicality of the law
- (c) the adoption by all Member States of the EU of all exceptions permissible under the Information Society Directive – in order to achieve the intended harmonisation across the EU, and to reduce confusion and inconsistency of copyright law which lead to lack of respect for it
- (d) the extension to all people with disabilities in the UK of the exception for the benefit of disabled people (which is currently enjoyed only by the visually-impaired and those unable to hold a book). It should be noted, for example, that while GCU has few visually impaired students there are hundreds of dyslexic students.